

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Homiller	Confirmation No.: 4326
Serial No.: 10/757,247	Examiner: Gims S. Philippe
Filed: January 14, 2004	Group Art Unit: 2621
For: MULTIMEDIA DISTRIBUTING AND/OR PLAYING SYSTEMS AND METHODS USING SEPARATE RESOLUTION-ENHANCING SUPPLEMENTAL DATA	

December 29, 2009

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Commissioner for Patents
P.O. Box 1450
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APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed August 27, 2009, and the "Notice of Panel Decision from Pre-Appeal Brief Review" mailed November 30, 2009.

Real Party In Interest

The real party in interest is assignee Sony Ericsson Mobile Communications AB, a corporation organized under the laws of Sweden having a principal place of business at Lund, Sweden.

Related Appeals and Interferences

Appellant is not aware of any appeals or interferences that would be affected by the present appeal.

Status of Claims

Appellant appeals the final rejection of Claims 1-7, 9-28, 30-46, and 48-67 as set forth in the Final Office Action of June 9, 2009 (hereinafter, the "Final Office Action"). Claims 1-7, 9-28, 30-46, and 48-67 remain pending as of the filing date of this Brief, are the subject of the present appeal, and stand rejected at least twice. The attached Appendix A presents the

claims as they currently stand, as well as the corresponding status of each of the pending claims.

Status of Amendments

All amendments filed in the present Application have been entered. The attached Appendix A presents these pending claims and the corresponding status of each of the pending claims.

Summary of Claimed Subject Matter

The present application includes independent Claims 1, 11, 19, 31, 41, 49, 53, and 60. Some embodiments of the present invention according to independent Claim 1 provide a multimedia distributing method. The method includes transmitting by a transmitter multimedia data having a first resolution, and separately transmitting by a transmitter supplemental data, which, when combined by a programmed computer processor with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution. *See* Appellant's Specification, paragraphs [0021]-[0022], [0031], and [0034]; **FIG. 10**. Transmitting multimedia data is performed in real or near real-time, and separately transmitting supplemental data is not performed in real or near real-time. *See* Appellant's Specification, paragraph [0021]; **FIG. 2**.

Other embodiments of the present invention according to independent Claim 11 provide a method of transmitting a multimedia work. The method includes streaming by a computer network a first portion of the multimedia work, and downloading by a computer network a second portion of the multimedia work. *See* Appellant's Specification, paragraphs [0021] and [0037]; **FIG. 12**. The first and second portions, when combined together, comprise the multimedia work. *See* Appellant's Specification, paragraph [0039]; **FIG. 14**.

Still other embodiments of the present invention according to independent Claim 19 provide a multimedia playing method. The method includes receiving by a receiver multimedia data having a first resolution, and separately receiving by a receiver supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution. *See* Appellant's Specification, paragraphs [0029]-[0030] and [0039]; **FIG. 14**. The method further includes combining by a programmed computer processor the multimedia data having

a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution, and playing the multimedia content at a second resolution that is higher than the first resolution. *See* Appellant's Specification, paragraph [0039]; **FIG. 14**. Receiving multimedia data is performed in real or near real-time, and separately receiving supplemental data is not performed in real or near real-time. *See* Appellant's Specification, paragraph [0056].

Yet other embodiments of the present invention according to independent Claim 31 provide a method of playing a multimedia work. The method includes streaming by a computer network a first portion of the multimedia work, and downloading by a computer network a second portion of the multimedia work. *See* Appellant's Specification, paragraphs [0021] and [0037]; **FIG. 12**. The method further includes combining by a programmed computer processor the first and second portions of the multimedia work to generate the multimedia work, and playing the multimedia work that is generated. *See* Appellant's Specification, paragraphs [0022], [0031], and [0039]; **FIG. 14**.

Further embodiments of the present invention according to independent Claim 41 provide a multimedia distribution system. The system includes an encoder that is responsive to input multimedia content and that is configured to encode the input multimedia content at a first resolution and to generate supplemental data, which, when combined with the input multimedia content that is encoded at a first resolution, provides the input multimedia content encoded at a second resolution that is higher than the first resolution. *See* Appellant's Specification, paragraph [0027]; **FIG. 7**. The system further includes a transmitter that is responsive to the encoder and that is configured to separately transmit the input multimedia content that is encoded at a first resolution and the supplemental data. *See* Appellant's Specification, paragraph [0027]; **FIG. 7**. The transmitter is configured to transmit the input multimedia content that is encoded at a first resolution in real or near real-time and to separately transmit the supplemental data in other than real or near real-time. *See* Appellant's Specification, paragraph [0056].

Other embodiments of the present invention according to independent Claim 49 provide a system for transmitting a multimedia work. The system includes a streaming server that is configured to transmit a first portion of the multimedia work, and a downloading server that is configured to transmit a second portion of the multimedia work. *See*

Appellant's Specification, paragraph [0042]; **FIG. 17**. The first and second portions together comprise the multimedia work. *See* Appellant's Specification, paragraph [0025], **FIG. 5**.

Still other embodiments of the present invention according to independent Claim 53 provide a multimedia playing system. The system includes a receiver that is configured to receive multimedia data having a first resolution and to separately receive supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution. *See* Appellant's Specification, paragraph [0028], [0039]; **FIGS. 7 and 14**. The system further includes a processor that is configured to combine the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution, and a multimedia transducer that is configured to play the multimedia content at a second resolution that is higher than the first resolution. *See* Appellant's Specification, paragraphs [0022]-[0023]; **FIGS. 3 and 4**. The receiver is configured to receive the input multimedia content that is encoded at a first resolution in real or near real-time and to separately receive the supplemental data in other than real or near real-time. *See* Appellant's Specification, paragraph [0056].

Yet other embodiments of the present invention according to independent Claim 60 provide a system for playing a multimedia work. The system includes a receiver that is configured to stream a first portion of the multimedia work and to download a second portion of the multimedia work. *See* Appellant's Specification, paragraph [0028]; **FIG. 7**. The system further includes a processor that is configured to combine the first and second portions of the multimedia work to generate the multimedia work, and a multimedia transducer that is configured to play the multimedia work that is generated. *See* Appellant's Specification, paragraphs [0022]-[0023]; **FIGS. 3 and 4**.

Dependent Claim 6 includes the recitations of Claim 1, and further specifies that transmitting multimedia data is subject to a first digital rights management scheme, and that separately transmitting supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; **FIG. 11**.

Dependent Claim 7 includes the recitations of Claim 1, and further specifies that separately transmitting supplemental data is preceded by receiving payment for the

supplemental data that is greater than payment that is received for the multimedia data having a first resolution. *See* Appellant's Specification, paragraphs [0042]-[0044]; **FIGS. 17 and 18.**

Dependent Claim 9 includes the recitations of Claim 1, and further specifies that transmitting multimedia data is performed from a first multimedia server, and that separately transmitting supplemental data is performed from a second multimedia server that is different from the first multimedia server. *See* Appellant's Specification, paragraph [0021].

Dependent Claim 15 includes the recitations of Claim 11, and further specifies that streaming is subject to a first digital rights management scheme, and that downloading is subject to a second digital rights management scheme that is different from the first digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; **FIG. 11.**

Dependent Claim 16 includes the recitations of Claim 11, and further specifies that downloading is preceded by receiving payment for the supplemental data that is greater than payment that is received for the streaming. *See* Appellant's Specification, paragraphs [0042]-[0044]; **FIGS. 17 and 18.**

Dependent Claim 17 includes the recitations of Claim 11, and further specifies that streaming is performed from a first multimedia server, and downloading is performed from a second multimedia server that is different from the first multimedia server. *See* Appellant's Specification, paragraph [0021].

Dependent Claim 27 includes the recitations of Claim 19, and further specifies that receiving multimedia data is subject to a first digital rights management scheme, and that separately receiving supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; **FIG. 11.**

Dependent Claim 28 includes the recitations of Claim 19, and further specifies that separately receiving supplemental data is preceded by providing payment for the supplemental data that is greater than payment that is provided for the multimedia data having a first resolution. *See* Appellant's Specification, paragraphs [0042]-[0044]; **FIGS. 17 and 18.**

Dependent Claim 38 includes the recitations of Claim 31, and further specifies that streaming is subject to a first digital rights management scheme, and that downloading is subject to a second digital rights management scheme that is different from the first digital

rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; FIG. 11.

Dependent Claim 39 includes the recitations of Claim 31, and further specifies that downloading is preceded by providing payment for the second portion that is greater than payment that is provided for the first portion. *See* Appellant's Specification, paragraphs [0042]-[0044]; FIGS. 17 and 18.

Dependent Claim 45 includes the recitations of Claim 41, and further specifies that the transmitter is configured to transmit the input multimedia content that is encoded at a first resolution subject to a first digital rights management scheme and to separately transmit the supplemental data subject to a second digital rights management scheme that is different from the first digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; FIG. 11.

Dependent Claim 46 includes the recitations of Claim 41, and further specifies that the transmitter is configured to separately transmit the supplemental data in response to receiving payment for the supplemental data that is greater than payment that is received for the input multimedia content that is encoded at a first resolution. *See* Appellant's Specification, paragraphs [0042]-[0044]; FIGS. 17 and 18.

Dependent Claim 51 includes the recitations of Claim 49, and further specifies that the streaming server is configured to transmit the first portion of the multimedia work subject to a first digital rights management scheme, and that the downloading server is configured to transmit the second portion of the multimedia work subject to a second digital rights management scheme that is different from the first digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; FIG. 11.

Dependent Claim 52 includes the recitations of Claim 49, and further specifies that the downloading server is configured to transmit the second portion of the multimedia work subject to receiving payment for the second portion that is greater than payment that is received for the first portion. *See* Appellant's Specification, paragraphs [0042]-[0044]; FIGS. 17 and 18.

Dependent Claim 58 includes the recitations of Claim 53, and further specifies that the receiver is further configured to receive the multimedia data having a first resolution subject to a first digital rights management scheme and to separately receive the supplemental data subject to a second digital rights management scheme that is different from the first

digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; **FIG. 11.**

Dependent Claim 59 includes the recitations of Claim 53, and further specifies that the receiver is configured to separately receive the supplemental data subject to providing payment for the supplemental data that is greater than payment that is provided for the multimedia data having a first resolution. *See* Appellant's Specification, paragraphs [0042]-[0044]; **FIGS. 17 and 18.**

Dependent Claim 66 includes the recitations of Claim 60, and further specifies that the receiver is configured to stream the first portion subject to a first digital rights management scheme, and that the receiver is further configured to download the second portion subject to a second digital rights management scheme that is different from the first digital rights management scheme. *See* Appellant's Specification, paragraphs [0035]-[0036]; **FIG. 11.**

Dependent Claim 67 includes the recitations of Claim 60, and further specifies that the receiver is configured to download the second portion subject to payment for the second portion that is greater than payment that is provided for the first portion. *See* Appellant's Specification, paragraphs [0042]-[0044]; **FIGS. 17 and 18.**

Grounds of Rejection to be Reviewed on Appeal

1. Whether Claims 1-7, 9-28, 30-46, and 48-67 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,266,817 to Chaddha ("Chaddha") in view of U.S. Patent No. 6,639,943 to Radha et al. ("Radha"). Final Office Action, page 3.

Argument

I. Introduction to 35 U.S.C. § 103 Analysis

Obviousness under 35 U.S.C. § 103 is a question of law, the resolution of which is based on the following factual inquiries: (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations, including evidence of commercial success, long-felt but unsolved needs, failure of others, and unexpected results. MPEP § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966). All words in a claim must be considered in judging the patentability of that claim against the prior art. MPEP § 2143.03 (citing *In re Wilson*, 424

F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. MPEP § 2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Mere conclusory statements are insufficient to support a rejection for obviousness; rather, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Intern. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Supreme Court in *KSR* observed that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 127 S.Ct. at 1741. As such, the Court noted that it was “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed, and, for that reason, the analysis regarding whether such reason existed “should be made explicit.” *KSR*, 127 S.Ct. at 1731. A corollary principle is that, when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be unobvious. *KSR*, 127 S.Ct. at 1740.

II. Claims 1-7, 9-28, 30-46, and 48-67 Are Patentable Over Chaddha in View of Radha

Appellant respectfully submits that Chaddha and Radha, considered either separately or in combination, fail to disclose or suggest all of the recitations of Claims 1-7, 9-28, 30-46, and 48-67, and, thus, the Final Office Action fails to present a *prima facie* case of unpatentability. A detailed claim analysis is presented below.

A. Independent Claims 1 and 41 Are Patentable

Claim 1 recites a multimedia distributing method “wherein transmitting multimedia data is performed in real or near real-time, and wherein separately transmitting supplemental data is not performed in real or near real-time” (emphasis added). Claim 41 is a system claim containing recitations corresponding to those of Claim 1 quoted above. Appellant notes that the Final Office Action asserts in the Response to Arguments section that “the limitation claiming ‘step of performing in real time or near real’ is considered to be an alternative language.” Final Office Action, page 2. Appellant respectfully submits, however, that one of skill in the art would not read the phrase “real or near-real time” as presenting alternatives, but rather would understand it to be a unitary phrase meaning “substantially real-time.” A

skilled artisan would recognize that the transmission or reception of data may be subject to a time lag that renders it technically not “real-time,” but still, for practical purposes, indistinguishable from real-time transmission or reception.

In rejecting Claims 1 and 41, the Final Office Action asserts that Chaddha at column 5, lines 40-41, 57-59, and 62-67 discloses “transmitting multimedia data ... and separately transmitting supplemental data” Final Office Action, page 3. Appellant respectfully submits, however, that Chaddha fails to disclose or suggest that the multimedia data and supplemental data are transmitted separately in time. In each of Claims 1 and 41, the multimedia data is transmitted in or near real-time, and the supplemental data is transmitted at other than real- or near-real-time. In contrast, the cited portions of Chaddha make clear that base layer **260** (even if assumed to correspond to Claim 1’s “multimedia data”) and first enhancement layer **340** and second enhancement layer **400** (even if assumed, together, to correspond to the “supplemental data” recited by Claim 1) are encoded together into a single bitstream. Chaddha, column 5, lines 57-59 (“Collectively, layers 260, 340, and 400 comprise the embedded bit-stream generated by the scalable video encoder 60.”). Chaddha further expressly states in the Summary of the Invention that the base layer and enhancement layers are transmitted at the same time as a single bitstream – *i.e.*, they are not separately transmitted. Chaddha, column 3, lines 34-37 (“Collectively, the base layer, and first and second enhancement layers comprise the single embedded bitstream that may be multicast over heterogeneous networks that can range from telephone lines to wireless transmission.” (emphasis added)). Chaddha nowhere discloses or suggests that the base layer and the enhancement layer(s) may be transmitted separately in time; indeed, Chaddha’s description of streaming base layer data and enhancement layer data within a single embedded stream actually teaches away from transmitting multimedia data in real- or near-real-time and separately transmitting supplemental data in non-real-time, as recited by Claims 1 and 41. Stated differently, while Chaddha may describe the separate encoding of base layer data and enhancement layer data, Chaddha makes clear that both are transmitted together.

The Final Office Action further cites Radha at column 6, lines 63-67 and column 7, lines 1-12, as “provid[ing] a multimedia distribution method including the step of not performing in real-time or near real-time the separate transmission of supplemental data” Final Office Action, page 4. Appellant respectfully submits, however, that the cited portion

of Radha makes clear that the base layer and enhancement layer data are both transmitted at the same time – *i.e.*, they are not separately transmitted:

[U]nder the hybrid structure according to the present invention, the coding of the video signal (both enhancement and base layers) can take place either in real-time ... or off-line prior to the time of transmission. In the second case, the video can be stored and then transmitted (or streamed) at a later time.

Radha, column 7, lines 2-7 (emphasis added). In other words, Radha states that “both enhancement and base layers” may be encoded and transmitted together in real-time, or “both enhancement and base layers” may be encoded off-line, stored, and then transmitted together at a later time. Radha does not disclose or suggest transmitting the base layer data in real- or near-real-time and separately transmitting the supplemental layer data in non-real-time, as recited by Claims 1 and 41. In other words, Radha may describe the separate encoding of base layer data and supplemental layer data, but makes clear that both data layers are transmitted together. Accordingly, Appellant respectfully submits that Radha does not supply the teachings missing from Chaddha, but instead is completely consistent with Chaddha in terms of transmitting both base layer data and enhancement layer data at the same time. Thus, even if one of skill in the art were to combine the teachings of Radha with those of Chaddha, the resulting combination would still fail to disclose or suggest all of the recitations of Claims 1 and 41.

For at least these foregoing reasons, Appellant respectfully submits that Claims 1 and 41, as well as the dependent claims thereof, are patentable over Chaddha in view of Radha, and requests the reversal of the final rejections of Claims 1 and 41 and the claims depending therefrom.

B. Independent Claims 11 and 49 Are Patentable

Claim 11 recites a method of transmitting a multimedia work comprising “streaming by a computer network a first portion of a multimedia work; and downloading by a computer network a second portion of the multimedia work” (emphasis added). Claim 49 is a system claim containing recitations corresponding to those of Claim 11 quoted above. Appellant’s Specification states that “streaming” may entail sending multimedia content to a user “in a continuous stream,” with the result that “real-time or near real-time playback may be provided.” Appellant’s Specification, paragraph [0003]. In contrast, “downloading” may

entail “transmit[ing] the data as a computer file, which is then stored at the user device and may be played back after the entire file is downloaded,” which may result in “a large playback latency time while the file is being downloaded.” Appellant’s Specification, paragraph [0003].

In rejecting Claims 11 and 49, the Office Action relies on the same portions of Chaddha and Radha that were cited in rejecting Claims 1 and 41. Final Office Action, page 3. Appellant, however, respectfully submits that neither Chaddha nor Radha, alone or in combination, discloses or suggests streaming a first portion of a multimedia work and downloading a second portion of the multimedia work, as recited by Claims 11 and 49. As noted above, Chaddha expressly describes base layer 260 and first enhancement layer 340 and second enhancement layer 400 as being encoded together into a single bitstream, and being transmitted at the same time as a single bitstream. Chaddha, column 5, lines 57-59 and column 3, lines 34-37. Likewise, Radha describes encoding and transmitting both enhancement and base layers together in real-time, or encoding both enhancement and base layers off-line for transmission together at a later time. Radha, column 7, lines 2-7. Neither, however, discloses or suggests streaming the base layer and separately downloading the enhancement layers, as recited by Claims 11 and 49.

Accordingly, Appellant respectfully submits that Claims 11 and 49 and the claims depending therefrom are patentable over Chaddha in view of Radha for at least these foregoing reasons, and requests the reversal of the final rejections of Claims 11 and 49 and the dependent claims thereof.

C. Independent Claims 19 and 53 Are Patentable

Claim 19 recites a multimedia playing method “wherein receiving multimedia data is performed in real or near real-time, and wherein separately receiving supplemental data is not performed in real or near real-time” (emphasis added). Claim 53 is a system claim containing recitations corresponding to those of Claim 19 quoted above.

In rejecting Claims 19 and 53, the Final Office Action does not specifically cite to any portion of Chaddha or Radha as disclosing the above-quoted recitations. Final Office Action, pages 4 and 5. The Final Office Action, in rejecting Claim 19, does cite generally to the same portions of Chaddha that it relied upon in rejecting Claims 1, 11, 41, and 49. Final Office Action, page 4. However, as discussed above with respect to Claims 1 and 41,

Chaddha describes transmitting both multimedia and supplemental data together, not transmitting multimedia data in real or near real-time and separately transmitting supplemental data in other than real or near real-time. For the same reasons, Chaddha, alone or in combination with Radha, also fails to disclose or suggest receiving multimedia data in real or near real-time, and separately receiving supplemental data in other than real or near real-time, as recited by Claims 19 and 53.

For at least these foregoing reasons, Appellant respectfully submits that Claims 19 and 53, and the claims depending therefrom, are patentable over Chaddha in view of Radha, and requests the reversal of the final rejections of Claims 19 and 53 and the dependent claims thereof.

D. Independent Claims 31 and 60 Are Patentable

Claim 31 recites a method of playing a multimedia work comprising “streaming by a computer network a first portion of a multimedia work; and downloading by a computer network a second portion of the multimedia work” (emphasis added). Claim 60 is a system claim containing recitations corresponding to those of Claim 31 quoted above.

In rejecting Claims 31 and 60, the Final Office Action does not specifically cite to any portion of Chaddha or Radha as disclosing the above-quoted recitations. Final Office Action, pages 4 and 5. The Final Office Action, in rejecting Claim 31, does cite generally to the same portions of Chaddha that it relied upon in rejecting Claims 1, 11, 41, and 49. Final Office Action, page 4. As discussed above with respect to Claims 11 and 49, though, Chaddha describes base layer **260** and first enhancement layer **340** and second enhancement layer **400** as being encoded together into a single bitstream, and being transmitted at the same time as a single bitstream. Chaddha, column 5, lines 57-59 and column 3, lines 34-37. However, Chaddha, alone or in combination with Radha, fails to disclose or suggest streaming a first portion of a multimedia work and separately downloading a second portion, as recited by Claims 31 and 60.

For at least these foregoing reasons, Appellant respectfully submits that Claims 31 and 60, and the claims depending therefrom, are patentable over Chaddha in view of Radha, and requests the reversal of the final rejections of Claims 31 and 60 and the dependent claims thereof.

E. Dependent Claims 6, 15, 27, 38, 45, 51, 58, and 66 Are Separately Patentable

As noted above, dependent Claims 6, 15, 27, 38, 45, 51, 58, and 66 are patentable at least per the patentability of the independent claims from which they depend. Additionally, Appellant respectfully submits that Claims 6, 15, 27, 38, 45, 51, 58, and 66 are also separately patentable. Claim 6 recites a method according to Claim 1 “wherein transmitting multimedia data is subject to a first digital rights management scheme; and wherein separately transmitting supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme.” Claims 15, 27, 38, 45, 51, 58, and 66 each contains substantially similar recitations.

In rejecting these claims, the Final Office Action relies on Chaddha, column 12, lines 5-18. Final Office Action, page 6. Appellant notes, however, that the cited portions of Chaddha relate only to requiring payment from users as a means of determining how scarce network resources will be utilized. *See, e.g.*, Chaddha, column 12, lines 5-9 (“In the [event] of scarcity of resources, ... payment for services and resources may be used to define the overall value of each resource allocation decision.”). In contrast, one of skill in the art would understand “digital rights management,” as recited by Claims 6, 15, 27, 38, 45, 51, 58, and 66, to refer to measures for protecting the rights of the owners of copyrights to digital media content by “enabling secure distribution and/or disabling illegal distribution of the content” – *e.g.*, “by encrypting the data so that it can only be accessed by authorized users or by marking the content with a digital watermark or similar method so that the content can not be freely distributed.” Definition of “DRM,” <http://www.webopedia.com/TERM/D/DRM.html>, accessed July 31, 2009. Chaddha nowhere describes methods for limiting distribution of digital media as a way of implementing copyright protection; rather, the methods discussed by Chaddha relate only to determining the optimal use of scarce network resources. Moreover, even assuming, for the sake of argument, that the methods described by Chaddha do comprise “digital rights management,” the Final Office Action does not indicate what elements of Chaddha correspond to the “first digital rights management scheme” or the “second digital rights management scheme that is different from the first,” and provides no further cites to any other portions of Chaddha or Radha as disclosing or suggesting the above-quoted recitations.

For at least these additional reasons, Appellant respectfully submits that Claims 6, 15, 27, 38, 45, 51, 58, and 66 are separately patentable, and requests the reversal of the final rejections thereof.

F. Dependent Claims 7, 16, 28, 39, 46, 52, 59, and 67 Are Separately Patentable

Claims 7, 16, 28, 39, 46, 52, 59, and 67 are patentable at least per the patentability of the independent claims from which they depend. Additionally, Appellant respectfully submits that Claims 7, 16, 28, 39, 46, 52, 59, and 67 are also separately patentable. Claim 7 recites a method according to Claim 1 “wherein separately transmitting supplemental data is preceded by receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution.” Similar recitations may be found in Claims 16, 28, 39, 46, 52, 59, and 67. Appellant notes that, although Claim 16 was not specifically rejected, it is included in the discussion below and similarly analyzed.

In rejecting these claims, the Final Office Action relies on Chaddha, column 12, lines 59-67 and column 13, lines 1-4. Final Office Action, page 6. The cited portions of Chaddha, however, merely note that a user may be provided with a certain amount of network bandwidth depending on how much the user is willing to pay. *See, e.g.*, Chaddha, column 12, lines 62-64 (“The user can specify the cost he/she is willing to pay and an appropriately scaled stream will be provided by the server.”). No mention is made in Chaddha of “receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution,” as recited by Claims 7, 16, 28, 39, 46, 52, 59, and 67. Stated differently, Chaddha merely describes how the network bandwidth provided to a user may be proportional to the amount the user is willing to pay (*i.e.*, the higher the payment, the more network bandwidth will be made available). In contrast, Claim 7 recites a method where a network operator may receive one payment to transmit the multimedia data having a first resolution, and may receive an additional payment to transmit the supplemental data. The cited portions of Chaddha fails to describe this latter scenario, and the Final Office Action provides no further cites to any other portions of Chaddha or Radha as disclosing or suggesting the above-quoted recitations of Claims 7, 16, 28, 39, 46, 52, 59, and 67.

Accordingly, Appellant respectfully submits that Claims 7, 16, 28, 39, 46, 52, 59, and 67 are separately patentable for at least these additional reasons, and requests the reversal of the final rejections thereof.

G. Dependent Claim 9 Is Separately Patentable

Claim 9 is patentable at least per the patentability of independent Claim 1 from which it depends. Appellant further respectfully submits that Claim 9 is also separately patentable. Claim 9 additionally recites “wherein transmitting multimedia data is performed from a first multimedia server; and wherein separately transmitting supplemental data is performed from a second multimedia server that is different from the first multimedia server.” In rejecting Claim 9, the Final Office Action relies on Chaddha, column 12, lines 40-48, as well as elements **20**, **55**, **90**, and **100** in **FIG. 1** of Chaddha, as disclosing the above-quoted recitations. Final Office Action, page 7. Appellant, however, notes that the cited portions of Chaddha do not appear to disclose or suggest the above-quoted recitations of Claim 9. Although **FIG. 1** of Chaddha does show multiple video disks (item **90**) and multiple audio disks (item **100**), **FIG. 1** does not show multiple transmitting servers, much less a first server for transmitting low resolution data and a separate server for transmitting supplemental data. Moreover, the cited portion of Chaddha at column 12, lines 40-48 fails to disclose or suggest multiple transmitting servers, and the Final Office Action provides no further cites to any other portions of Chaddha or Radha as disclosing or suggesting the above-quoted recitations. Accordingly, Appellant respectfully submits that Claim 9 is separately patentable for at least these additional reasons, and requests the reversal of the final rejection thereof.

H. Dependent Claim 17 Is Separately Patentable

Claim 17 is patentable at least per the patentability of independent Claim 11 from which it depends. Appellant further respectfully submits that Claim 17 is also separately patentable. Claim 17 additionally recites “wherein streaming is performed from a first multimedia server; and wherein downloading is performed from a second multimedia server that is different from the first multimedia server.” As with Claim 9, the Final Office Action cites Chaddha, column 12, lines 40-48, as well as elements **20**, **55**, **90**, and **100** in **FIG. 1** of Chaddha, as disclosing the above-quoted recitations of Claim 17. Final Office Action, page 7. However, the cited portions of Chaddha do not appear to teach streaming from a first multimedia server and downloading from a second multimedia server, as recited by Claim 17. In Chaddha’s **FIG. 1**, item **20** is a streaming server, but **FIG. 1** appears to depict neither a downloading server nor streaming servers that are different from downloading servers. For at

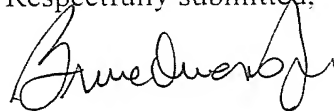
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least these additional reasons, Appellant respectfully submits that Claim 17 is separately patentable, and requests the reversal of the final rejection thereof.

III. Conclusion

In summary, Appellant respectfully submits that the cited references do not teach all of the recitations of the pending claims for at least the reasons discussed herein. Accordingly, Appellant respectfully requests reversal of the rejections of pending claims based on the cited references.

Respectfully submitted,



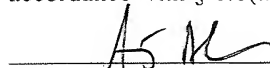
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Anthony DeRosa

APPENDIX A – CLAIMS APPENDIX

1. (Previously presented) A multimedia distributing method comprising:
transmitting by a transmitter multimedia data having a first resolution; and
separately transmitting by a transmitter supplemental data, which, when combined by a programmed computer processor with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution,
wherein transmitting multimedia data is performed in real or near real-time, and
wherein separately transmitting supplemental data is not performed in real or near real-time.
2. (Previously presented) A method according to Claim 1 wherein transmitting multimedia data and separately transmitting supplemental data are at least partially separated in transmission space, channel and/or medium.
3. (Original) A method according to Claim 1:
wherein transmitting multimedia data comprises streaming multimedia data having a first resolution; and
wherein separately transmitting supplemental data comprises downloading supplemental data, which, when combined with the multimedia data having a first resolution, provides the multimedia content at a second resolution that is higher than the first resolution.
4. (Original) A method according to Claim 1:
wherein the first resolution comprises a first sampling frequency, a first compression ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first number of pixels, a first frame rate, a first number of colors and/or a first coding rate; and
wherein the second resolution comprises, respectively, a second sampling frequency that is higher than the first sampling frequency, a second compression ratio that is lower than the first compression ratio, a second frequency range that is wider than the first frequency range, a second number of bits of resolution that is greater than the first number of bits of resolution, a second distortion level that is lower than the first distortion level, a second number of pixels that is greater than the first number of pixels, a second frame rate that is

greater than the first frame rate, a second number of colors that is greater than the first number of colors and/or a second coding rate that is higher than the first coding rate.

5. (Original) A method according to Claim 1 wherein the supplemental data is of a first size and wherein the multimedia content at the second resolution is of a second size that is larger than the first size.

6. (Original) A method according to Claim 1:
wherein transmitting multimedia data is subject to a first digital rights management scheme; and
wherein separately transmitting supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme.

7. (Original) A method according to Claim 1:
wherein separately transmitting supplemental data is preceded by receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution.

8. (Canceled)

9. (Original) A method according to Claim 1:
wherein transmitting multimedia data is performed from a first multimedia server; and
wherein separately transmitting supplemental data is performed from a second multimedia server that is different from the first multimedia server.

10. (Original) A method according to Claim 1:
wherein transmitting multimedia data is performed using a wireless network; and
wherein separately transmitting supplemental data is performed using a wired network.

11. (Previously presented) A method of transmitting a multimedia work comprising:

streaming by a computer network a first portion of the multimedia work; and
downloading by a computer network a second portion of the multimedia work,
wherein the first and second portions when combined together comprise the multimedia
work.

12. (Original) A method according to Claim 11:
wherein streaming comprises streaming multimedia data at a first resolution; and
wherein downloading comprises downloading supplemental data, which, when
combined with the multimedia data at a first resolution, provides the multimedia work at a
second resolution that is higher than the first resolution.

13. (Original) A method according to Claim 11 wherein streaming and
downloading are at least partially separated in transmission time, space, channel and/or
medium.

14. (Original) A method according to Claim 12:
wherein the first resolution comprises a first sampling frequency, a first compression
ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first
number of pixels, a first frame rate, a first number of colors, a first number of channels and/or
a first coding rate; and

wherein the second resolution comprises, respectively, a second sampling frequency
that is higher than the first sampling frequency, a second compression ratio that is lower than
the first compression ratio, a second frequency range that is wider than the first frequency
range, a second number of bits of resolution that is greater than the first number of bits of
resolution, a second distortion level that is lower than the first distortion level, a second
number of pixels that is greater than the first number of pixels, a second frame rate that is
greater than the first frame rate, a second number of colors that is greater than the first
number of colors, a second number of channels that is greater than the first number of
channels and/or a second coding rate that is higher than the first coding rate.

15. (Original) A method according to Claim 11:
wherein streaming is subject to a first digital rights management scheme; and

wherein downloading is subject to a second digital rights management scheme that is different from the first digital rights management scheme.

16. (Original) A method according to Claim 11:

wherein downloading is preceded by receiving payment for the supplemental data that is greater than payment that is received for the streaming.

17. (Original) A method according to Claim 11:

wherein streaming is performed from a first multimedia server; and

wherein downloading is performed from a second multimedia server that is different from the first multimedia server.

18. (Original) A method according to Claim 11:

wherein streaming is performed using a wireless network; and

wherein downloading is performed using a wired network.

19. (Previously presented) A multimedia playing method comprising:

receiving by a receiver multimedia data having a first resolution;

separately receiving by a receiver supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution;

combining by a programmed computer processor the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution; and

playing the multimedia content at a second resolution that is higher than the first resolution,

wherein receiving multimedia data is performed in real or near real-time, and

wherein separately receiving supplemental data is not performed in real or near real-time.

20. (Original) A method according to Claim 19 further comprising:

playing the multimedia data at the first resolution.

21. (Original) A method according to Claim 20 wherein playing the multimedia data at the first resolution is performed prior to playing the multimedia content at the second resolution that is higher than the first resolution.

22. (Original) A method according to Claim 19 wherein receiving, separately receiving, combining and playing are performed in a single user device.

23. (Previously presented) A method according to Claim 19 wherein receiving multimedia data and separately receiving supplemental data are at least partially separated in originating space, receiving channel and/or medium.

24. (Previously presented) A method according to Claim 19:
wherein receiving multimedia data comprises receiving streaming multimedia data having a first resolution; and
wherein separately receiving supplemental data comprises downloading supplemental data, which, when combined with the multimedia data having a first resolution, provides the multimedia content at a second resolution that is higher than the first resolution.

25. (Original) A method according to Claim 19:
wherein the first resolution comprises a first sampling frequency, a first compression ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first number of pixels, a first frame rate, a first number of colors and/or a first coding rate; and
wherein the second resolution comprises, respectively, a second sampling frequency that is higher than the first sampling frequency, a second compression ratio that is lower than the first compression ratio, a second frequency range that is wider than the first frequency range, a second number of bits of resolution that is greater than the first number of bits of resolution, a second distortion level that is lower than the first distortion level, a second number of pixels that is greater than the first number of pixels, a second frame rate that is greater than the first frame rate, a second number of colors that is greater than the first number of colors and/or a second coding rate that is higher than the first coding rate.

26. (Original) A method according to Claim 19 wherein the supplemental data is of a first size and wherein the multimedia content at the second resolution is of a second size that is larger than the first size.

27. (Original) A method according to Claim 19:
wherein receiving multimedia data is subject to a first digital rights management scheme; and
wherein separately receiving supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme.

28. (Original) A method according to Claim 19:
wherein separately receiving supplemental data is preceded by providing payment for the supplemental data that is greater than payment that is provided for the multimedia data having a first resolution.

29. (Canceled)

30. (Original) A method according to Claim 19:
wherein receiving multimedia data is performed using a wireless network; and
wherein separately receiving supplemental data is performed using a wired network.

31. (Previously presented) A method of playing a multimedia work comprising:
streaming by a computer network a first portion of the multimedia work;
downloading by a computer network a second portion of the multimedia work;
combining by a programmed computer processor the first and second portions of the multimedia work to generate the multimedia work; and
playing the multimedia work that is generated.

32. (Original) A method according to Claim 31:
wherein streaming comprises streaming the multimedia work at a first resolution;

wherein downloading comprises downloading supplemental data, which, when combined with the multimedia work at a first resolution, provides the multimedia work at a second resolution that is higher than the first resolution;

wherein the combining comprises combining the multimedia work at a first resolution and the supplemental data to generate the multimedia work at the second resolution; and

wherein playing comprises playing the multimedia work at the second resolution.

33. (Original) A method according to Claim 32 further comprising:
playing the multimedia work at the first resolution.

34. (Original) A method according to Claim 33 wherein playing the multimedia work at the first resolution is performed prior to playing the multimedia work at the second resolution that is higher than the first resolution.

35. (Original) A method according to Claim 31 wherein streaming, downloading, combining and playing are performed in a single user device.

36. (Original) A method according to Claim 31 wherein streaming and downloading are at least partially separated in receiving time, originating space, receiving channel and/or medium.

37. (Original) A method according to Claim 32:

wherein the first resolution comprises a first sampling frequency, a first compression ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first number of pixels, a first frame rate, a first number of colors, a first number of channels and/or a first coding rate; and

wherein the second resolution comprises, respectively, a second sampling frequency that is higher than the first sampling frequency, a second compression ratio that is lower than the first compression ratio, a second frequency range that is wider than the first frequency range, a second number of bits of resolution that is greater than the first number of bits of resolution, a second distortion level that is lower than the first distortion level, a second number of pixels that is greater than the first number of pixels, a second frame rate that is

greater than the first frame rate, a second number of colors that is greater than the first number of colors, a second number of channels that is greater than the first number of channels and/or a second coding rate that is higher than the first coding rate.

38. (Original) A method according to Claim 31:
wherein streaming is subject to a first digital rights management scheme; and
wherein downloading is subject to a second digital rights management scheme that is different from the first digital rights management scheme.

39. (Original) A method according to Claim 31:
wherein downloading is preceded by providing payment for the second portion that is greater than payment that is provided for the first portion.

40. (Original) A method according to Claim 31:
wherein streaming is performed using a wireless network; and
wherein downloading is performed using a wired network.

41. (Previously presented) A multimedia distribution system comprising:
an encoder that is responsive to input multimedia content and that is configured to encode the input multimedia content at a first resolution and to generate supplemental data, which, when combined with the input multimedia content that is encoded at a first resolution, provides the input multimedia content encoded at a second resolution that is higher than the first resolution; and

a transmitter that is responsive to the encoder and that is configured to separately transmit the input multimedia content that is encoded at a first resolution and the supplemental data,

wherein the transmitter is configured to transmit the input multimedia content that is encoded at a first resolution in real or near real-time and to separately transmit the supplemental data in other than real or near real-time.

42. (Previously presented) The system according to Claim 41 wherein the transmitter is configured to separately transmit the input multimedia content that is encoded

at a first resolution and the supplemental data at least partially separated in transmission ~~time~~, space, channel and/or media.

43. (Original) A system according to Claim 41 wherein the transmitter is further configured to stream the input multimedia content that is encoded at a first resolution and to download the supplemental data.

44. (Original) A system according to Claim 41:

wherein the first resolution comprises a first sampling frequency, a first compression ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first number of pixels, a first frame rate, a first number of colors and/or a first coding rate; and

wherein the second resolution comprises, respectively, a second sampling frequency that is higher than the first sampling frequency, a second compression ratio that is lower than the first compression ratio, a second frequency range that is wider than the first frequency range, a second number of bits of resolution that is greater than the first number of bits of resolution, a second distortion level that is lower than the first distortion level, a second number of pixels that is greater than the first number of pixels, a second frame rate that is greater than the first frame rate, a second number of colors that is greater than the first number of colors and/or a second coding rate that is higher than the first coding rate.

45. (Original) A system according to Claim 41 wherein the transmitter is configured to transmit the input multimedia content that is encoded at a first resolution subject to a first digital rights management scheme and to separately transmit the supplemental data subject to a second digital rights management scheme that is different from the first digital rights management scheme.

46. (Original) A system according to Claim 41 wherein the transmitter is configured to separately transmit the supplemental data in response to receiving payment for the supplemental data that is greater than payment that is received for the input multimedia content that is encoded at a first resolution.

47. (Canceled)

48. (Original) A system according to Claim 41 wherein the transmitter comprises:
a first multimedia server that is configured to transmit the input multimedia content
that is encoded at a first resolution; and
a second multimedia server that is configured to transmit the supplemental data.

49. (Original) A system for transmitting a multimedia work comprising:
a streaming server that is configured to transmit a first portion of the multimedia
work; and
a downloading server that is configured to transmit a second portion of the
multimedia work, wherein the first and second portions together comprise the multimedia
work.

50. (Original) A system according to Claim 49:
wherein the streaming server is configured to stream multimedia data at a first
resolution; and
wherein the downloading server is configured to download supplemental data, which,
when combined with the multimedia data at a first resolution, provides the multimedia work
at a second resolution that is higher than the first resolution.

51. (Original) A system according to Claim 49:
wherein the streaming server is configured to transmit the first portion of the
multimedia work subject to a first digital rights management scheme; and
wherein the downloading server is configured to transmit the second portion of the
multimedia work subject to a second digital rights management scheme that is different from
the first digital rights management scheme.

52. (Original) A system according to Claim 49:
wherein the downloading server is configured to transmit the second portion of the
multimedia work subject to receiving payment for the second portion that is greater than
payment that is received for the first portion.

53. (Previously presented) A multimedia playing system comprising:
a receiver that is configured to receive multimedia data having a first resolution and to separately receive supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution;
a processor that is configured to combine the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution; and
a multimedia transducer that is configured to play the multimedia content at a second resolution that is higher than the first resolution,
wherein the receiver is configured to receive the input multimedia content that is encoded at a first resolution in real or near real-time and to separately receive the supplemental data in other than real or near real-time.

54. (Original) A system according to Claim 53 wherein the multimedia transducer is further configured to play the multimedia data having a first resolution.

55. (Previously presented) A system according to Claim 53 wherein the supplemental data is at least partially separated from the multimedia data having a first resolution in originating space, receiving channel and/or medium.

56. (Original) A system according to Claim 53:
wherein the receiver is further configured to stream the multimedia data having a first resolution and download the supplemental data.

57. (Original) A system according to Claim 53:
wherein the first resolution comprises a first sampling frequency, a first compression ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first number of pixels, a first frame rate, a first number of colors and/or a first coding rate; and
wherein the second resolution comprises, respectively, a second sampling frequency that is higher than the first sampling frequency, a second compression ratio that is lower than the first compression ratio, a second frequency range that is wider than the first frequency

range, a second number of bits of resolution that is greater than the first number of bits of resolution, a second distortion level that is lower than the first distortion level, a second number of pixels that is greater than the first number of pixels, a second frame rate that is greater than the first frame rate, a second number of colors that is greater than the first number of colors and/or a second coding rate that is higher than the first coding rate.

58. (Original) A system according to Claim 53:

wherein the receiver is further configured to receive the multimedia data having a first resolution subject to a first digital rights management scheme and to separately receive the supplemental data subject to a second digital rights management scheme that is different from the first digital rights management scheme.

59. (Original) A system according to Claim 53:

wherein the receiver is configured to separately receive the supplemental data subject to providing payment for the supplemental data that is greater than payment that is provided for the multimedia data having a first resolution.

60. (Original) A system for playing a multimedia work comprising:

a receiver that is configured to stream a first portion of the multimedia work and to download a second portion of the multimedia work;

a processor that is configured to combine the first and second portions of the multimedia work to generate the multimedia work; and

a multimedia transducer that is configured to play the multimedia work that is generated.

61. (Original) A system according to Claim 60:

wherein the receiver is configured to stream the multimedia work at a first resolution and to download the second portion as supplemental data, which, when combined with the first portion, provides the multimedia work at a second resolution that is higher than the first resolution;

wherein the processor is configured to combine the multimedia work at a first resolution and the supplemental data to generate the multimedia work at the second resolution; and

wherein the multimedia transducer is configured to play the multimedia work at the second resolution.

62. (Original) A system according to Claim 61 wherein the multimedia transducer is further configured to play the multimedia work at the first resolution.

63. (Original) A system according to Claim 62 wherein the multimedia transducer is further configured to play the multimedia work at the first resolution prior to playing the multimedia work at the second resolution that is higher than the first resolution.

64. (Original) A system according to Claim 60 wherein the first and second portions of the multimedia work are at least partially separated in receiving time, originating space, receiving channel and/or medium.

65. (Previously presented) A system according to Claim 61:

wherein the first resolution comprises a first sampling frequency, a first compression ratio, a first frequency range, a first number of bits of resolution, a first distortion level, a first number of pixels, a first frame rate, a first number of colors, a first number of channels ~~colors~~ and/or a first coding rate; and

wherein the second resolution comprises, respectively, a second sampling frequency that is higher than the first sampling frequency, a second compression ratio that is lower than the first compression ratio, a second frequency range that is wider than the first frequency range, a second number of bits of resolution that is greater than the first number of bits of resolution, a second distortion level that is lower than the first distortion level, a second number of pixels that is greater than the first number of pixels, a second frame rate that is greater than the first frame rate, a second number of colors that is greater than the first number of colors, a second number of channels that is greater than the first number of channels and/or a second coding rate that is higher than the first coding rate.

66. (Original) A system according to Claim 60:

wherein the receiver is configured to stream the first portion subject to a first digital rights management scheme; and

wherein the receiver is configured to download the second portion subject to a second digital rights management scheme that is different from the first digital rights management scheme.

67. (Original) A system according to Claim 60:

wherein the receiver is configured to download the second portion subject to payment for the second portion that is greater than payment that is provided for the first portion.

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APPENDIX B – EVIDENCE APPENDIX

None.

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APPENDIX C – RELATED PROCEEDINGS APPENDIX

None.